

CITY-COUNTY GENERAL ORDINANCE NO. 122, 1988
Proposal No. 578, 1988
DOCKET NO. 88-A0-5

A GENERAL ORDINANCE amending Marion County Council Ordinance No. 8-1957, as amended, and fixing a time when the same shall take effect.

WHEREAS, I.C. 36-7-4 establishes a single planning and zoning authority in counties having consolidated cities and grants certain powers relative to the zoning and districting of land to the Metropolitan Development Commission and City-County Council of such counties in order to unify the planning and zoning functions thereof; and

WHEREAS, I.C. 36-7-4 empowers the Metropolitan Development Commission of Marion County, Indiana, to recommend to the City-County Council an ordinance or ordinances for the enforcement of zoning or districting of all lands within Marion County to the end that adequate light, air, convenience of access and safety from fire, flood and other danger may be secured; that congestion in public ways may be lessened or avoided; that the public health, safety, comfort, morals, convenience and general welfare may be promoted; and

WHEREAS, the fundamental rights against unreasonable searches and seizures are protected by the Fourth and Fourteenth Amendments to the Constitution of the United States and by Article I of the Constitution of the State of Indiana; and

WHEREAS, the Metropolitan Development Commission or any designated enforcement official in exercising the police power of the municipality may invoke any legal, equitable or special remedy for the enforcement of I.C. 36-7-4 or any ordinance adopted or action taken under I.C. 36-7-4; now, therefore:

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. That Marion County Council Ordinance No. 8-1957, as amended, pursuant to I.C. 36-7-4, be amended as follows:

Section 1. Statement of Purpose.

An Amendment to the Marion County Council Ordinance No. 8-1957, as amended, Zoning Ordinance for Marion County, Indiana, is hereby remedial and shall be construed in such a manner as to effectuate its purpose of promoting the public health, safety, comfort, morals, convenience and general welfare by enforcement of all zoning ordinances for all lands within Marion County, Indiana.

Section 2. Definitions.

A. "Administrator" means the Administrator of the Division of Development Services of the Department of Metropolitan Development of the Consolidated City of Indianapolis.

B. "Designated Enforcement Entity" means the Metropolitan Development Commission of Marion County, Indiana.

C. "Inoperable Motor Vehicle" means: (1) a motor vehicle from which there has been removed the engine, transmission or differential or that is otherwise partially dismantled or mechanically inoperable, or (2) any motor vehicle which cannot be driven on a city street without being subject to the issuance of a traffic citation by reason of its operating condition.

D. "Inspectors" mean employees of the Division of Development Services authorized by the Administrator, to enter, examine and survey all lands within Marion County to accomplish the enforcement of all zoning ordinances and land use regulations of Marion County.

E. "Land Use Petition" means a rezoning petition, variance petition, approval petition, special exception petition, or any other petition permitted by the Rules of Procedure adopted by the Metropolitan Development Commission of Marion County or the Metropolitan Board of Zoning Appeals.

F. "Site Improvement" means the erection, construction, placement, repair, alteration, conversion, removal, demolition, maintenance, moving, razing or remodeling of any new or existing structure or any part thereof and any activity for which an Improvement Location Permit is required.

G. "Zoning Districts" mean the districts depicted by the Comprehensive Zoning Maps of Marion County, Indiana.

Section 3. Jurisdiction.

A. The Metropolitan Development Commission of Marion County may institute a suit for injunctive and monetary relief in the Municipal, Circuit, or Superior Courts of Marion County, Indiana; said suit is to be brought in the name of and captioned as "The Metropolitan Development Commission of Marion County, Indiana" versus the person, persons or entity charged with violating the provisions of any zoning ordinances or land use regulations of Marion County, Indiana.

B. The Metropolitan Development Commission may also institute a suit for mandatory injunction directing a person, persons or entity to remove a structure erected in violation of any zoning ordinances or land use regulations of Marion County, Indiana.

C. A structure erected, raised, or converted, or land or premises used in violation of any zoning and land use ordinance of Marion County, Indiana, shall and hereby is declared to be a common nuisance and the owner or possessor of the structure, land, or premises shall be liable for maintaining a common nuisance pursuant to I.C. 36-7-4-1012.

Section 4. Inspection of Property; Right of Entry.

A. The Administrator and inspectors are authorized to make inspections of all lands located within Marion County in order to enforce all zoning ordinances and land use regulations of Marion County, Indiana.

B. In order to execute inspections, the Administrator or inspectors shall have the right to enter upon any premises at any reasonable time for the purpose of carrying out his/their duties in the enforcement of zoning ordinances and land use regulations of Marion County, Indiana, unless the owner or occupant of the premises refuses to permit entry to the Administrator or inspectors when such entry is sought pursuant to this Section. In the event of said refusal, the Administrator may make application to any judge of the Municipal, Circuit or Superior Courts of Marion County, Indiana for the issuance of an administrative search warrant. Such application shall identify the premises upon which entry is sought and the purpose for which entry is desired. The application shall state the facts giving rise to the belief that a condition which is in violation of a zoning ordinance or land use regulation of Marion County, Indiana exists on such premises, or that a violation in fact exists and must be abated, and that the condition or violation is not a lawful nonconforming use to the best of the affiant's belief. Any warrant issued pursuant to such application shall order such owner or occupant to permit entry to the Administrator or inspectors for the purposes stated therein. In no event shall the Administrator or inspectors have the right to enter residential structures or other structures not open to the public without the permission of the owner or occupant or an administrative search warrant first obtained. Prior to entering such residential structure or other structure not open to the public, the Administrator or inspector shall advise the owner or occupant that such owner or occupant is not required to grant entry without the presentation of an administrative search warrant.

Section 5. Stop-work Order.

A. The Administrator or his duly authorized designee is empowered to issue an order requiring the suspension of land improvement of any kind when any of the following circumstances exist:

1. Site improvement is occurring without an Improvement Location Permit or any other permit required by zoning ordinances having first been obtained;
2. Site improvement is occurring in violation of the terms or conditions of any special exception or variance granted under the metropolitan development law as contemplated by I.C. 36-7-4; in violation of conditions imposed by the plat committee under the metropolitan development law; in violation of covenants made in connection with the platting of a subdivision that is approved by the plat committee; in violation of commitments made in accordance with I.C. 36-7-4-607 or I.C. 36-7-4-921; or in violation of the terms, conditions or provisions of any Marion County zoning ordinance; and

3. Site improvement is occurring for which a Certificate of Appropriateness from the Indianapolis Historic Preservation Commission is required pursuant to I.C. 36-7-11.1-1 et seq., without a Certificate of Appropriateness having first been issued.

B. The stop-work order shall be posted on the property in a conspicuous place, or personally delivered to the owner, possessor, or person in charge and state the conditions under which construction or other activity may be resumed. The Administrator or his duly authorized designee shall meet with the recipient of a stop-work order upon request to explain the conditions under which construction or other activity may be resumed.

C. The designated enforcement entity may institute a suit in a court of competent jurisdiction to enforce the provisions of a stop-work order.

Section 6. Civil Zoning Violations.

A. The following shall be deemed civil zoning violations which may be enforced by the designated enforcement entity in accordance with the procedures set forth in sections 6, 7 and 8 of this ordinance:

1. The location, erection, or maintenance of any sign not specifically permitted by the Sign Regulations of Marion County, Indiana;
2. The failure to obtain an Improvement Location Permit when one is required by the terms and provisions of the Improvement Location Permit Ordinance of Marion County, Indiana;
3. The outdoor storage of junk, trash, or debris in any zoning district the provisions of which do not specifically permit such a use;
4. The outdoor storage of inoperable motor vehicles or motor vehicle parts in any zoning district the provisions of which do not specifically permit such a use;
5. The parking or storage, in any zoning district the provisions of which do not specifically permit such a use, of any motor vehicle used or designed: (a) for use in pulling, towing, hauling, transporting, or (b) as a temporary or permanent base, platform or support for equipment, machinery, materials or other goods (including but not limited to stake body trucks, dump trucks, trucks or tractors having dual rear wheels or more than 2 axles, semi-trailer tractors, semi-trailers and trailers having dual rear wheels or more than 1 axle or having an overall length of more than 12 feet). However, this provision does not apply to motor vehicles which do not exceed the three-quarter ton load classification in

size and which are the primary source of transportation for an individual whose primary place of residence is the particular dwelling at which the commercial motor vehicle is parked on a regular basis; and

6. The outdoor storage or display of merchandise or goods in any zoning district the provisions of which do not specifically permit such a use or in violation of zoning district development standards regulating said use.

B. Any person who uses property in violation of subsection (A) shall be deemed to have committed a civil zoning violation and may be issued a citation by the designated enforcement entity pursuant to Section 7.

C. Each day a violation remains uncorrected is a distinct and separate civil zoning violation subject to an additional citation and fine in the amount prescribed by subsection (D) below provided a warning ticket has first been issued pursuant to Section 7(B).

D. The monetary fine for each civil zoning violation shall be Fifty Dollars (\$50.00), except that for a repeated civil zoning violation, the following fines shall apply:

Second Citation	\$100.00
Third Citation	\$150.00
Fourth Citation	\$200.00
Each Citation in excess of four	\$300.00

In no event shall the total monetary fine for each civil zoning violation exceed Two Thousand Five Hundred Dollars (\$2,500.00).

E. All fines prescribed by this section for civil zoning violations shall be paid to the controller, who shall render to the person making the payment a receipt stating the amount and purpose for which the fine has been paid, a duplicate of which shall be made a part of the records of the city. All fines thus received shall be deposited with the controller.

Section 7. Citation for Civil Zoning Violations.

A. The Administrator or his duly authorized designees may issue a civil citation to a person who commits a civil zoning violation or to the legal owner, the contract vendee, or any person or entity with a possessory interest in the real estate upon which the violation occurs. The citation may be served by personal service, by certified mail, by First class U.S. mail or by placement in a conspicuous place on the property where the violation occurs and shall serve as notice to a person that he has committed a civil zoning violation.

B. No citation shall be issued unless the person who commits a civil zoning violation or the legal owner, the contract vendee, or any person or entity with a possessory interest in the real estate upon which the violation

occurs has been issued a warning ticket not less than seven-~~(7)~~ ten (10) days before the issuance of the citation to allow said person to correct the violation to come into compliance with the prescribed zoning ordinance or regulation.

C. If a person who receives a warning ticket or a citation elects to file a land use petition, then the person must indicate his intent to file the land use petition on the warning ticket or citation and return a copy to the Division of Development Services. A person shall have ~~fourteen-(14)~~ ten (10) days following the issuance of the warning ticket ~~or-citation~~ to file the petition, and additional monetary fines as prescribed in Section 6(D) shall be stayed upon receipt of the warning ticket ~~or-citation~~ by the Division or upon filing the land use petition, whichever first occurs. A person who files the petition within said time period must pursue the land use petition in an expeditious fashion. If the land use petition is denied, withdrawn, or dismissed for lack of prosecution and the civil zoning violation continues at the real estate, then a lawsuit will be commenced by the designated enforcement entity in Municipal, Circuit or Superior Court of Marion County, Indiana.

D. The warning ticket shall include:

1. Date,
2. Name and address,
3. Section number of ordinance in violation and name of ordinance,
4. Nature of violation,
5. Place and time of violation,
6. Range of fines which could be assessed upon continued noncompliance activity,
7. Specific time allowed to bring the violative activity into compliance,
8. Name, business address and phone number of person issuing a warning ticket, and
9. Statement to violator of option to file land use petition.

E. The citation shall appear on serialized designated form and include:

1. Date,
2. Name and address,
3. Section number of ordinance in violation and name of ordinance,
4. Nature of violation,
5. Place and time of violation,
6. Amount of fine assessed,
7. ~~Time, Manner,~~ and location to pay fine, and date of payment not less than seven (7) days following the issuance of the citation.
8. Notice that each day is a new violation,
9. Name, business address and phone number of person issuing citation,
10. Statement to violator of right to elect trial, and

11. Statement to violator of option to file land use petition.

Section 8. Trial for Civil Zoning Violations.

A. A person who receives a citation may elect to stand trial for the offense by indicating on the citation his intent to stand trial and returning a copy of the citation to the Division of Development Services. The returned copy of the citation shall serve as notice of the person's intent to stand trial, and additional monetary fines prescribed in Section 6(D) shall be stayed upon receipt of the notice. The notice shall be given at least five (5) days before the date of payment set forth in the citation. On receipt of the notice of intention to stand trial, a lawsuit will be commenced by the designated enforcement entity in Municipal, Circuit, or Superior Court of Marion County, Indiana. The matter shall be scheduled for trial, and a Summons and an Order to Appear shall be served upon the Defendant.

B. If a person who receives a citation fails to pay the assessed fine by the date of payment set forth in the citation and fails to give notice of his intention to stand trial as prescribed in subsection (A) above, the designated enforcement entity may file a civil lawsuit as provided by applicable laws and seek penalties as prescribed in section 9.

C. In proceedings before the Court for a civil zoning violation, the Indiana Rules of Trial Procedure shall govern. The designated enforcement entity has the burden of proving the civil zoning violation by a preponderance of the evidence.

D. A person adjudged to have committed a civil zoning violation is liable for the Court costs and fees. No cost shall be assessed against the designated enforcement entity in any such action.

E. Seeking a civil penalty as authorized in this section, does not preclude the designated enforcement entity from seeking alternative relief from the Court in the same action, or from seeking injunctive relief or any other remedy in a separate action for the enforcement of I.C. 36-7-4 or any ordinance adopted or action taken under I.C. 36-7-4.

F. A change of venue from Marion County shall not be granted in such a case, as provided in I.C. 36-7-4-1014(d).

Section 9. General Penalties.

A. Whenever in any chapter, article, or section of Marion County Council Ordinance No. 8-1957, as amended, Zoning Ordinance for Marion County, Indiana, or of any ordinances amendatory thereof or supplemental thereto, the doing of any act, or the omission to do any act or to perform any duty, is a violation, any person held liable by a court of competent jurisdiction for such violation shall be fined not more than Two Thousand Five Hundred Dollars (\$2,500.00) for each such violation, act or omission.

B. For violations continued or renewed after the imposition of a fine in subsection (A) above, each day's violation shall constitute a separate offense.

C. In addition to the foregoing penalty prescribed in subsections (A) and (B) above, the designated enforcement entity may enjoin or abate any violation of zoning ordinances and land use regulations of Marion County, Indiana by appropriate action.

Section 10. Conflict of Ordinances; Severability/Partial Invalidity.

A. If this amendment is in conflict with any existing ordinance, or any amendment thereof, the one which establishes a higher standard for promotion and protection of public health, safety, comfort, morals, convenience, and general public welfare, overrides the other.

B. If for any reason any article, division, section, subsection, sentence, clause, phrase, or word of this ordinance should be declared unconstitutional or invalid for any reason whatsoever, such decision shall not affect the remaining portions of this ordinance which shall remain in full force and effect; therefore, the provisions of this amendment are hereby declared severable.

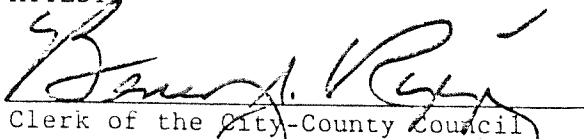
Section 11. Repealer.

Section 2 of the Improvement Location Permit Ordinance of Marion County, Indiana (Ordinance 68-A0-11, as amended) and Marion County Ordinance 60-A0-2 are hereby specifically repealed.

SECTION 2. This ordinance shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

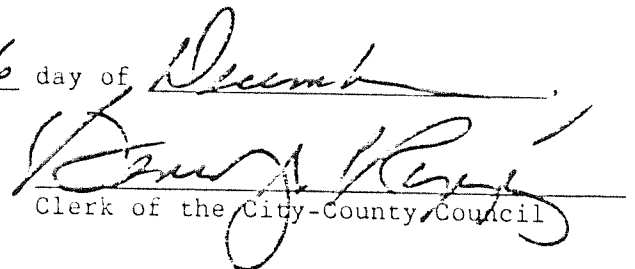
The foregoing was passed by the City-County Council this 12th day of December, 1988, at 10:38 p.m.

ATTEST:


Clerk of the City-County Council


President

Presented by me to the Mayor this 16 day of December, 1988, at 10:00 a.m.


Clerk of the City-County Council

Approved and signed by me this 23 day of Dec.,
1988.

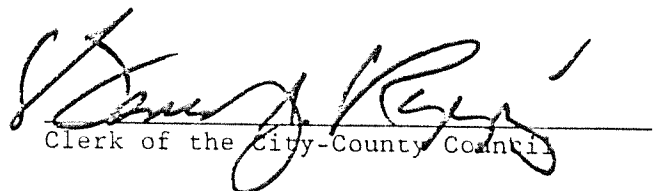

MAYOR

STATE OF INDIANA, MARION COUNTY)

CITY OF INDIANAPOLIS) SS: .
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I, BEVERLY S. RIPPY, Clerk of the City-County Council, Indianapolis, Marion County, Indiana, do hereby certify the above and foregoing is a full, true, and complete copy of Proposal No. 578, 1988, As Amended, a Proposal for a GENERAL ORDINANCE, passed by the City-County Council on the 12th day of December, 1988, by a vote of 25 AYES and 2 NAYS, and was retitled General Ordinance No. 122, 1988, which was signed by the Mayor on the 23rd day of December, 1988, and now remains on file and on record in my office.

WITNESS my hand and the official seal of the City of Indianapolis, Indiana, this _____ day of _____, 1988.


Clerk of the City-County Council

(SEAL)